

TO: Senate Natural Resources Committee
FROM: Ronda Wiggers
On Behalf OF: Montana Water Well Drillers Association
RE: SB 94 as Amended
DATE: February 13, 2009

Mr. Chairman and members of the committee,

I apologize for being unable to attend the hearing. Please accept this letter at my testimony in opposition to SB 94 as amended.

The Water Well Drillers testified against SB 94 in the original hearing as we felt that it took steps to procedurally move to equate net depletion with adverse impact.

Although we appreciate the efforts of the amendments, they still do not make SB 94 acceptable to our members.

Specifically, I would refer you to the amendment in line 16 on page 2 of the bill. The deletion of the reference to historic beneficial use.

The Water Well Drillers firmly believe that if a water right holder applies for a change in use in his appropriation, this should not be denied on the basis that their historical use was less than their "paper" appropriation. However, we also do not believe that paper appropriations should be able to stop new permits if there will be no adverse affect on the historical beneficial use of the senior water rights holder. We feel that striking this language would tilt the law too far in that direction.

Our second concern remaining in the amended version of the bill is found on page 6. By adding the language "for which there is not an associated water right" it seems that we are acknowledging that removal of water loving vegetation can mitigate net depletion. However, this proposed change in the law would only allow some parties to use this in their mitigation formula and would specifically disallow others from using it. That hardly seems reasonable as the amount of water used by a plant is not determined based on whether you or not you hold a water right.

For these reasons we would ask the committee to give SB 94, as amended, a do not pass recommendation.